

Message Text

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DRAFTED BY L/SFP:LGFIELDS:MFM

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S/CCT:AM0. HOFFACKER

L:RDKEARNEY

L/T:EMCDOWELL

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FM SECSTATE WASHDC

TO AMEMBASSY THE HAGUE

C O N F I D E N T I A L STATE 219439

E.O. 11652: GDS

TAGS: PINS, NL

SUBJECT: CONVENTION ON PROTECTION OF DIPLOMATS

REF: THE HAGUE 4840

1. DEPT. CONSIDERS GON HESITATION IN SIGNING SUBJECT CONVENTION MOST REGRETTABLE, ESPECIALLY SINCE ITS HESITATION IS PROMPTED BY WHAT WOULD APPEAR TO DEPT. TO BE A SOMEWHAT STRAINED INTERPRETATION THAT CONVENTION WOULD HAVE "SEVERELY LIMITED" GON'S ABILITY TO NEGOTIATE WITH TERRORIST ON RELEASE OF HOSTAGES.

2. WHILE THE CONVENTION OBVIOUSLY CONTEMPLATES EFFECTIVE INTERNATIONAL RESPONSE TO TERRORIST ACTS WHICH ARE DIRECTED AGAINST INTERNATIONALLY PROTECTED PERSONS, HUMANITARIAN FACTORS WILL INEVITABLY INFLUENCE THE RESPONSIVE ACTIONS OF AN ADHERING STATE WITH RESPECT TO AN ON-GOING ACT INVOLVING A HOSTAGE SITUATION PERPE-
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TRATED WITHIN THE TERRITORY OF THAT STATE. THERE IS NO

QUESTION THAT ARTICLE 6 OBLIGATES AN ADHERING STATE TO
"TAKE APPROPRIATE MEASURES UNDER ITS INTERNAL LAW SO AS TO
ENSURE (THE ALLEGED OFFENDER'S) PRESENCE FOR THE PURPOSE
OF PROSECUTION OR EXTRADITION." THAT OBLIGATION, HOWEVER,
IS CONDITIONED ON THE SATISFACTION OF THE STATE HAVING THE
OBLIGATION "THAT THE CIRCUMSTANCES SO WARRANT". NEEDLESS
TO SAY, THE USG WOULD NOT WISH ENCOURAGE ANY INTERPRETATION
WHICH WOULD HAVE THE EFFECT OF MATERIALLY WEAKENING THE

OBLIGATION OF PARTIES IN THIS IMPORTANT EFFORT; HOWEVER,
WE RECOGNIZE THAT ANY POLICY MUST BE TEMPERED BY A RESPECT
FOR THE SAFETY OF HOSTAGES. THIS APPROACH MUST BE
TAKEN WITH GREAT CARE AND VIEWED IN THE GENERALLY
ACCEPTED OPTIMUM AIM OF THE CONVENTION TO FORECLOSE "SAFE
HAVENS" FOR ALLEGED OFFENDERS DEFINED IN THE CONVENTION.
THUS, REASONABLE ACTIONS, DIRECTLY MOTIVATED BY PRIORITY
CONCERNS FOR THE LIFE AND/OR SAFETY OF HOSTAGES, CAN BE
TAKEN WITHOUT DOING VIOLENCE TO THE LETTER OR SPIRIT OF
ARTICLE 6 OF THE CONVENTION.

3. THE CONVENTION FORMS THE LEGAL BASIS IN ADDRESSING THIS
VITAL COMMON INTERNATIONAL PROBLEM TO (1) DEVELOP AMONG
ADHERING STATES COMMONALITY IN THEIR RESPECTIVE INTERNAL
LEGAL SYSTEMS TO MAKE THOSE OFFENSES SPECIFIED IN ARTICLE
2 PUNISHABLE IN THOSE STATES AND (2) CREATE A MECHANISM
BY WHICH PERPETRATORS OF THESE OFFENSES ARE ULTIMATELY
BROUGHT TO JUSTICE; E.G., EXTRADITION OR OBLIGATION TO
PROSECUTE. TOTAL ADHERENCE TO THE CONVENTION WOULD
OBVIOUSLY ELIMINATE "SAFE HAVENS" ALTOGETHER AND WIDE-
SPREAD ADHERENCE WOULD POTENTIALLY PLACE A "POLITICAL
PRICE" ON GIVING ASYLUM TO THOSE WHO COMMIT PROSCRIBED
OFFENSES UNDER THE CONVENTION. IT IS, THEREFORE, VERY
MUCH IN THE INTEREST OF THE COMMUNITY OF NATIONS TO TAKE
AT LEAST THIS STEP TOWARD A SOLUTION TO THIS SERIOUS
CONDITION WHICH IF UNCHECKED WILL CONTINUE TO GROW.

4. FYI: DIFFERENCES ON IMPLEMENTING LEGISLATION HAVE BEEN
RESOLVED WITHIN EXECUTIVE BRANCH AND CONVENTION SHOULD BE
SUBMITTED TO THE SENATE IN THE VERY NEAR FUTURE. END FYI.

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